



# SAN DIEGO COMMUNITY COLLEGE DISTRICT

## Administrative Procedure

### Chapter 5 – Student Services

#### AP 3100.2 – INTERIM TITLE IX PROCEDURES – ADDENDUM

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The San Diego Community College District (“District”) is committed to providing an environment for its students, employees, and visitors that is free from discrimination based on sex or gender, inclusive of sexual orientation and gender identity. The purpose of this Administrative Procedure is to fulfill this commitment, as well as to meet the District’s obligations under Title IX of the Education Amendments of 1972 (“Title IX”), the Violence Against Women Act (“VAWA”), and various provisions of the California Education Code. This Administrative Procedure specifies the process by which the District responds to a “Title IX Report” involving a Student engaging in Prohibited Conduct, as defined below.

This Administrative Procedure supersedes all other protocols and procedures governing the District’s response to Title IX Reports. The District reserves the right to modify this Administrative Procedure during the pendency of any Title IX Report, with reasonable notice to all Parties, in order to comply with evolving legal requirements and judicial interpretations.

#### 1. DEFINITIONS

The following definitions apply to this Administrative Procedure:

- a. “Student” means any person who, at the time of the alleged Prohibited Conduct:
  - 1) Is then currently enrolled in a course being offered by the District;
  - 2) Is then attending a student welcome or orientation event put on by the District; or
  - 3) Was previously enrolled in a course within the District, presently intends to enroll in one or more additional courses in the District, and who is between academic terms at the time of the alleged Prohibited Conduct.
- b. “Prohibited Conduct” means harassment based on sex or gender, sexual assault, dating violence, domestic violence, and sex or gender-based stalking as defined in Board of Trustees Policy, *BP 3100, Student Rights, Responsibilities, Campus Safety and Administrative Due Process*, or other sex or gender-based discrimination as defined by Title IX; provided that the conduct, as alleged, occurs “Within District Activities or Programs,” as defined below.
- c. “Within District Activities or Programs” means conduct that occurs:
  - 1) At a District location, including any campus or other location owned or controlled by the District;
  - 2) At a non-District location but within the context of a District-sponsored program or activity; or

- 3) At a non-District location and not within the context of a District-sponsored program of activity, if there is a “sufficient nexus,” as defined below, between the conduct and a District program or activity.
- d. “Sufficient Nexus” means that there exists a likelihood that the complainant may reasonably encounter the respondent, within District activities and programs, in a manner sufficient to deprive the complainant of their ability to enjoy the benefits of the District activity or program in question, e.g., when the continued presence or participation of the respondent may reasonably be expected to create a hostile environment for the complainant.
  - e. “Title IX Report” means notice being received by a District employee, other than an employee designated as a confidential resource, regarding alleged prohibited conduct by a student.
  - f. “Non-Title IX Conduct” means conduct that does not constitute prohibited conduct, or the reporting of which does not constitute a Title IX Report, as defined above; including, without limitation, conduct that does not occur within District activities or programs, or as to which sufficient nexus is lacking.
  - g. “Complainant” means any person who has alleged that they were subjected to, or who is reported in a Title IX report as having been subjected to, prohibited conduct.
  - h. “Respondent” means any person who allegedly engaged in prohibited conduct.
  - i. “Receive(s)” or “Received,” with respect to a Title IX Report, means that a District employee has become aware or should have become aware, based upon information known or provided to them, of conduct that, if it occurred as alleged, would constitute prohibited conduct. A student, employee, or visitor does not need to submit a formal complaint to a District employee for a Title IX Report to be considered “received.” However, a Title IX Report is not “received” if the information known or provided to the District employee is insufficient to reasonably determine, with reasonable diligence and effort, whether the allegations fall within the definition of prohibited conduct.
  - j. A “Party” means either a complainant or a respondent. Each complainant or respondent shall possess the rights and responsibilities described in this Administrative Procedure on an individual basis, however, the District’s Title IX Office may consolidate one or more investigations or hearing processes into a single such process in matters that involve multiple complainants or respondents arising from, or which reasonably appear to arise from, a single course of conduct.
  - k. “Level One Report” means a Title IX Report concerning conduct that, as alleged, is sufficiently severe or pervasive to be reasonably likely to deprive a reasonable person in the same situation of the benefits of District programs or activities unless the respondent’s participation is limited or eliminated. Without limitation, a report of sexual violence will generally be considered a level one report.
  - l. “Level Two Report” means a Title IX Report that does not allege conduct sufficiently severe or pervasive to constitute a level one report.
  - m. “Prohibited Retaliation” means willful conduct intended to intimidate, punish or discriminate against an individual because they filed or assisted with the filing or

processing of a Title IX Report, including, without limitation, as a witness or complainant; or because such person otherwise exercises or advocates for any rights under Title IX or this Administrative Procedure.

## 2. SCOPE AND APPLICABILITY

This Administrative Procedure applies to all Title IX Reports, including level one and level two reports, as well as to prohibited retaliation. This Administrative Procedure does not apply to non-Title IX conduct.

At the sole discretion of the Vice Chancellor, Student Services, the Title IX Office may resolve allegations of non-Title IX Conduct via this procedure for good cause (e.g., to avoid confusion or duplication of effort with activities under other District policies and procedures).

## 3. PROCEDURE

### a. Reporting to Title IX Office

Any person who receives a Title IX Report shall promptly report the matter to the Title IX Coordinator, who may be contacted at (619) 388-6660 or [titleix@sdccd.edu](mailto:titleix@sdccd.edu). If the Title IX Coordinator is not available, the report shall be made to the Title IX Investigator, or to the Vice Chancellor of Student Services.

Certain District employees who have been designated as confidential resources will not report matters otherwise reportable under this Administrative Procedure without permission from the complainant; these include campus mental health counselors and medical personnel.

### b. Response by Title IX Office

For each Title IX Report that is received by the Title IX Office, the Title IX Coordinator shall designate the matter as a level one or level two report. All reports involving allegations of discriminatory conduct occurring via a pattern and not alleging that any single individual (whether known or unknown) has committed discrimination shall be designated as a level two report. At their discretion and for good cause, the Title IX Coordinator may designate any report as a level one report, but shall not designate a report as a level two report if it meets the requirements of a level one report.

The Title IX Coordinator shall notify all parties of the designation as a level one or level two report. Such designation may occur at any stage of the response process prior to the release of the investigation report (see Section 3(e)(1)(h)). Notwithstanding any such initial designation, the Title IX Coordinator may modify the designation based on additional information or investigation at any point prior to the release of the investigation report. In the event the Title IX Coordinator modifies a prior designation, they shall promptly notify all parties.

As soon as is practicable, the Title IX Coordinator or their designee shall attempt to contact the complainant to facilitate an in-person or telephone meeting and shall attempt to provide written information concerning District Policies and Procedures, the complainant's rights and abilities, and any other information required by law.

In any meeting with staff of the Title IX Office, any party has the right to bring a supportive individual or advisor who was not a witness to the conduct in question and may be an attorney. The supportive individual or advisor may not speak on the party's behalf. The District reserves the right to exclude any advisor who fails to abide by this condition or who otherwise unreasonably disrupts this process. The District generally will not schedule a meeting solely to accommodate an advisor's schedule, but will make reasonable attempts to facilitate an advisor's participation via phone or video. The Title IX Coordinator may restrict the active participation of an advisor in this process so long as the restrictions apply equally to the parties.

At any time, the Title IX Office may attempt to resolve the matter informally in a manner agreeable to both parties, but shall never require the matter to be resolved informally or require either party to participate in mediation.

At all times and without restriction, the Title IX Office may undertake responsive measures that do not limit either party's participation in District programs (e.g., facilitate transfers between class sections or issue No Contact Orders). If such responsive measures are sufficient to end, prevent, and remedy the potentially discriminatory situation in the assessment of the Title IX Coordinator, the matter shall be deemed resolved and all parties so notified.

The Title IX Office shall dismiss the matter if at any point it becomes apparent that there does not exist sufficient information leading to a reasonable possibility that the allegation of discrimination might be substantiated based on the preponderance of the evidence. All parties shall be notified of this determination.

The Title IX Office will make a good faith effort to complete the resolution process promptly, typically within 90 business days. This deadline may be extended for good cause by the Title IX Coordinator, including responding to a request from law enforcement. The parties will be notified in writing of any extension of this deadline.

#### c. Interim Measures

The Title IX Office may at any time impose restrictions upon either party's participation in District programs on an interim basis in order to ensure the safety of the parties and/or the District community while further proceedings occur. Examples include a temporary removal from class, an exclusion from designated areas of campus, or a temporary suspension from campus activities. The Title IX Office shall consider each situation on an individualized basis, including factors such as the nature of the allegations, existence or non-existence of substantiating information, the disruption to both parties of imposing a given interim measure or failing to impose a given interim measure, and the availability of lesser measures. A given party's participation in District programs will not be restricted on the basis of their identity as that given party.

If interim restrictions are to be imposed on a given party, that party shall be duly provided with written notice as soon as practicable. If such restriction includes a temporary suspension or exclusion, such action shall be initiated by the Vice Chancellor, Student Services. The party shall further be provided an opportunity to attend an in-person, *ex parte* hearing in front of the Vice Chancellor (or their designee) to contest the necessity of the interim suspension. The purpose of this hearing is solely to contest the necessity of the interim restriction and not to render any conclusions regarding the respondent's responsibility for the alleged conduct. In making a determination, the Vice

Chancellor may consult with any party who is likely to be impacted by a change in interim restrictions. The Vice Chancellor shall provide written notification of the results of this limited hearing to any impacted party. Any violation of an interim restriction will be referred for discipline under Board of Trustees, Policy *BP 3100, Student Rights, Responsibilities, Campus Safety and Administrative Due Process*.

d. Level Two Reports

For all matters identified as a level two report that have not been resolved by other means, the Title IX Office shall proceed in accordance with this section. The Title IX Coordinator or designee shall:

- 1) If not already done, request to meet with the complainant to collect all relevant information and a list of relevant witnesses;
- 2) Meet with witnesses identified by or for the complainant, to the extent deemed germane in the discretion of the Title IX Office;
- 3) Provide written notification to the respondent of the allegations, and schedule a meeting at which the respondent may provide responsive information and a list of relevant witnesses;
- 4) Meet with witnesses identified by or for the respondent, as deemed germane in the discretion of the Title IX Office;
- 5) Make a determination by the preponderance of the evidence whether discrimination exists and, if so, impose a sanction or other remedial measures that shall not include a suspension of more than ten (10) days; and
- 6) Provide notification of the determination made by the Title IX Office and any sanction to be imposed, including the rationale for the determination; such notification shall be provided to both parties, in writing, within five (5) business days, and shall be deemed made when transmitted via email or U.S. mail to the last known address for each party.

For all level two reports, the determination by the Title IX Coordinator or designee is final.

e. Level One Reports

For all matters identified as a level one report that have not been resolved by other means, the Title IX Office shall proceed in accordance with this section.

1) Investigation

The Title IX Coordinator shall direct the Title IX Investigator to undertake a thorough, reliable, and impartial investigation consisting of the following elements:

- a) Parties will be given an opportunity to provide information, including documentary information, that is substantive and relevant to the allegations.

- b) Parties will be given an opportunity to identify persons they believe to be relevant, substantive witnesses. The Title IX Investigator will attempt to interview such witnesses.
- c) The Title IX Office shall provide the respondent with a Notice of Investigation (“NOI”) concerning the allegations, including a summary of the allegations, the identity of the complainant/s if known, the policies implicated by the allegations, information on the applicable procedures, and all specifics to which they are legally entitled under federal or state law. The NOI may be delivered via email, US mail, or hand delivery. The NOI will provide the Respondent with an opportunity to contact the Title IX Office to schedule a meeting, which must occur within five (5) business days of the date the NOI is delivered, at which the respondent may provide information responsive to the allegations.
- d) Each party may bring an advisor or supportive individual of their choice to any meeting during the course of the investigation. That advisor or supportive individual may not be a witness to the conduct in question, may be an attorney, but may not speak on the party’s behalf.
- e) Under no circumstances shall the Title IX Office be required to receive or consider information relevant only to the character of any party or witness.
- f) After collecting all relevant information, the Title IX Investigator shall prepare a written summary of such information and make this summary, including relevant exhibits, available to the Parties in any manner permitted under federal or state law. Each party will be permitted to offer responsive information and to suggest questions relevant to the allegations, within two (2) business days of the summary being made available.
- g) The Title IX Investigator shall continue to gather information and speak with witnesses relevant to the allegations as may be appropriate.
- h) Upon the expiration of the parties’ response period, the Title IX Investigator shall prepare an investigation report detailing the information collected during the investigation (“Investigation Report”). The Investigation Report shall include, without limitation, as may be relevant to the allegations: information regarding factors supporting or undermining the credibility of any party or witness or of any account; and information regarding the severity or pervasiveness of the conduct under review.
- i) Based upon the Investigation Report, the Title IX Coordinator shall make a determination by the preponderance of the evidence whether a respondent is responsible for violating District Policy for engaging in some or all of the conduct alleged in the Notice of Investigation, and, if so, impose any appropriate sanction. Sanctions range from a warning to expulsion, depending on factors including but not limited to the nature of the conduct and its severity, any relevant circumstances surrounding the conduct, previous disciplinary history, and the need for sanctions that will bring an end to the conduct and prevent its recurrence.
- j) Notification of the determination of the Title IX Coordinator, any sanction, and the accompanying rationale, (“Notification of Determination”) shall be provided to

both Parties in writing within three (3) business days of the Title IX Coordinator's receipt of the Investigation Report. The parties shall be provided with a copy of the Investigation Report. Names and other identifying information that is known to the parties may be redacted from the Investigation Report but will be provided upon request. Students and their advisors are expected to maintain the privacy of these records, which may not be disclosed publicly, or otherwise shared with a third party except as necessary to respond to the allegations. Advisors who fail to abide by these privacy expectations may be excluded from the proceedings, and the impacted student may replace the excluded advisor with a new advisor in a timely manner.

- k) Either party may appeal, for any reason, the determination or sanction of any level one report, within five (5) business days of the transmission of the Notification of Determination. A party who deliberately did not participate in the investigatory portion of this process may not submit an appeal. If no appeal is received, the matter shall be deemed final and any applicable sanction shall promptly be imposed.

## 2) Appeal and Hearing

Any party may initiate an appeal by:

- a) Submitting to the Title IX Office a written statement of appeal that identifies the reason for the appeal and what the party seeks to change. The party submitting the appeal and any other Party affected by the requested changes shall be designated as parties to the appeal.
- b) Upon receipt of one or more statement(s) of appeal, the Title IX Office shall provide copies to the other parties and identify a time, date, and location, at least ten (10) business days subsequent to the date of this notification, of the scheduled appeal hearing, the identity of the hearing chair, and access to the investigation file.
- c) The non-appealing party or parties may provide a written response to the statement of appeal within five (5) days of their receipt of the statement of appeal. Such written response will be provided to the appealing party at least four (4) days prior to the hearing. All information distributed to the parties in conjunction with the appeal shall be subject to the same confidentiality and redaction provisions as the investigation report (see section 3(e)(1)(j)).
- d) At least two (2) days prior to the hearing, both parties shall submit to the Title IX Office the information they intend to present at the appeal hearing, copies of any documents they intend to present, the name of any witness whose testimony they intend to offer, and a brief summary of the expected testimony of each witness. Any proposed witness must have been interviewed by the Title IX Investigator at the investigatory phase, unless (i) all parties consent to the witness' participation in the appeal hearing, or (ii) the hearing chair determines that the witness is material to the appeal and the party offering the witness presents information satisfactory to the hearing chair that the witness was not reasonably available to be interviewed during the investigatory phase or declined to be interviewed of their own volition and not due to any preference or actions of the offering party.

- e) At least two (2) days prior to the appeal hearing, the Title IX Office shall provide all of the information described in section 3(e)(2)(d) to the opposing party, and the role of the Title IX Office in this respect shall be solely to facilitate the transmission of information to the respective parties and to the hearing chair.

Parties are expected to attend the appeal hearing. Parties' requests for alternate hearing dates will not be considered except in extreme circumstances, such as a documented serious illness, injury, or family emergency.

If the appealing party is absent, the appeal shall be dismissed. If the party responding to the appeal is absent, the Title IX Coordinator shall determine whether that party's absence will deprive the appealing party of their constitutional right to confront and cross-examine their accuser(s). If so, the appeal shall be granted. If not, the appeal shall proceed to a hearing. In making this determination, the Title IX Coordinator shall consider and implement alternative methods to confront and cross-examine if practicable.

The hearing chair for the appeal shall be the Vice Chancellor, Student Services, or their designee who must be in a position equivalent or senior to the Title IX Coordinator. Any hearing chair shall be trained in accordance with applicable state or federal law.

No sanctions identified under section 3(e)(1)(i) of this Procedure shall be imposed during the pendency of an appeal initiated by a respondent who is the subject of such sanctions; interim sanctions may remain in effect during the pendency of any appeal at the discretion of the Vice Chancellor, Student Services.

During the appeal process, the District's Director of Legal Services shall serve in an advisory role to the hearing chair. This role shall be limited to counseling the hearing chair regarding compliance with the requirements of federal and state law or regulations, or District Policies or Procedures, and may not include counsel regarding substantive questions about the merits of the complaint/appeal. Prior to the hearing date, the Director of Legal Services may offer both parties and/or their advisors the opportunity to participate in a pre-hearing conference to discuss the hearing process and to answer any procedural or evidentiary questions. This pre-hearing conference shall not be used to discuss substantive questions or to permit inter-party discussion.

The hearing procedure shall be at the discretion of the hearing chair within the following framework:

- a) The hearing will be conducted privately; non-participants may not attend. Participants may only audio-record or video-record the hearing, or portions thereof, with permission from the hearing chair.
- b) The hearing chair will have access to the final Investigation Report, the Notification of Determination, and any information submitted by a party in accordance with section 3(e)(2).
- c) In hearings involving more than one respondent or complainant, the hearing chair may elect to: (a) conduct a joint hearing, or (b) conduct separate hearings, or

portions of hearings, provided that any party maintains access to portions of the hearing relevant to a determination of their appeal.

- d) Any student who provides false information as part of an appeal hearing will be referred for discipline under Board of Trustees Policy, *BP 3100, Student Rights, Responsibilities, Campus Safety and Administrative Due Process*.
- e) The hearing chair may question the Title IX Investigator, who will appear as a witness.
- f) Any party, or their advisor, shall have an opportunity to question the Title IX Investigator.
- g) Any party shall have an opportunity to make a statement. The hearing chair may impose reasonable time limits on such statements, which will apply equally to the parties.
- h) The hearing chair may question any respondent, complainant or witness at any time.
- i) Any respondent or complainant may be cross-examined by the other party, or by the other party's advisor, via written questions submitted to the hearing chair.
- j) The hearing chair will, whenever possible, ask any cross-examination questions as they are submitted and will not rephrase or change the questions. Questions that are harassing or clearly irrelevant to the determination of the appeal may be excluded at the hearing chair's sole discretion; in the event that a question or questions are excluded, the submitting party or advisor will be permitted an opportunity to submit a rephrased question that is not harassing or clearly irrelevant.
- k) Complainant(s) may present witnesses whose names and expected testimony were submitted pursuant to Section 3(e)(2)(d). These witnesses may be cross-examined by the other party, or by the other party's advisor, via written questions submitted to the hearing chair.
- l) Respondent(s) may present witnesses whose names and expected testimony were submitted pursuant to section 3(e)(2)(d). These witnesses may be cross-examined by the other party, or by the other party's advisor, via written questions submitted to the hearing chair.
- m) The hearing chair may exclude information or testimony from a party or witness that is: unnecessarily duplicative, abusive, or irrelevant to the determination of the appeal. In these cases, the hearing chair will state the reason for the exclusion.
- n) The hearing chair may allow a party or witness to be visually and/or physically separated during the hearing via the use of a physical partition, video conference, or other appropriate technology, provided that the hearing chair retains sufficient access to any party or witness presenting information, and any respondent or complainant retains the opportunity to hear the statements of all individuals who give testimony at the hearing.

o) Formal rules of evidence will not apply to the hearing.

The hearing chair shall render a determination of an appeal based on a preponderance of the evidence standard. The hearing chair may:

- a) Uphold the initial finding and/or sanction;
- b) Overturn the initial finding and/or sanction and impose a new finding and/or sanction;
- c) Modify the initial finding and/or sanction in part or in whole; or
- d) Remand the matter to the Title IX Investigator, or to another investigator, for further investigation, with instructions on what further investigation shall occur. Any supplemental investigative information will be provided to the hearing chair and to the parties, and the parties shall be given three (3) business days to submit a response to the hearing chair. The hearing chair may then uphold, overturn, or modify the finding and/or sanction.

The hearing chair's determination shall be considered final. The determination and the rationale for the determination will be set forth in a final written report, which shall be provided to all parties to the appeal within three (3) business days of the conclusion of the hearing or the receipt of additional information and response(s) from the appropriate party(ies), as the case may be.

Approved by  
the Chancellor: October 1, 2019

Supersedes: New Interim Procedure